

(c) Best management practices may be established in permits under paragraph (b) of this section alone or in combination with those required under paragraph (a) of this section.

(d) In addition to the requirements of paragraphs (a) and (b) of this section, dischargers covered under § 125.102 shall develop and implement a best management practices program in accordance with § 125.104 which prevents, or minimizes the potential for, the release of toxic or hazardous pollutants from ancillary activities to waters of the United States.

§ 125.104 Best management practices programs.

(a) BMP programs shall be developed in accordance with good engineering practices and with the provisions of this subpart.

(b) The BMP program shall:

(1) Be documented in narrative form, and shall include any necessary plot plans, drawings or maps;

(2) Establish specific objectives for the control of toxic and hazardous pollutants.

(i) Each facility component or system shall be examined for its potential for causing a release of significant amounts of toxic or hazardous pollutants to waters of the United States due to equipment failure, improper operation, natural phenomena such as rain or snowfall, etc.

(ii) Where experience indicates a reasonable potential for equipment failure (e.g., a tank overflow or leakage), natural condition (e.g., precipitation), or other circumstances to result in significant amounts of toxic or hazardous pollutants reaching surface waters, the program should include a prediction of the direction, rate of flow and total quantity of toxic or hazardous pollutants which could be discharged from the facility as a result of each condition or circumstance;

(3) Establish specific best management practices to meet the objectives identified under paragraph (b)(2) of this section, addressing each component or system capable of causing a release of significant amounts of toxic or hazardous pollutants to the waters of the United States;

(4) *The BMP program:* (i) May reflect requirements for Spill Prevention Control and Countermeasure (SPCC) plans under section 311 of the Act and 40 CFR part 151, and may incorporate any part of such plans into the BMP program by reference;

[*Comment:* EPA has proposed section 311(j)(1)(c) regulations (43 FR 39276) which require facilities subject to NPDES to develop and implement SPCC plans to prevent discharges of reportable quantities of designated hazardous substances. While subpart K requires only procedural activities and minor construction, the proposed 40 CFR part 151 (SPCC regulations) are more stringent and comprehensive with respect to their requirements for spill prevention. In developing BMP programs in accordance with subpart K, owners or operators should also consider the requirements of proposed 40 CFR part 151 which may address many of the same areas of the facility covered by this subpart.]

(ii) Shall assure the proper management of solid and hazardous waste in accordance with regulations promulgated under the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA) (40 U.S.C. 6901 *et seq.*). Management practices required under RCRA regulations shall be expressly incorporated into the BMP program; and

(iii) Shall address the following points for the ancillary activities in § 125.102:

- (A) Statement of policy;
- (B) Spill Control Committee;
- (C) Material inventory;
- (D) Material compatibility;
- (E) Employee training;
- (F) Reporting and notification procedures;
- (G) Visual inspections;
- (H) Preventive maintenance;
- (I) Housekeeping; and
- (J) Security.

[*Comment:* Additional technical information on BMPs and the elements of a BMP program is contained in publication entitled "Guidance Manual for Developing Best Management Practices (BMP)." Copies may be obtained by written request to the Office of Water Resource Center (mail code: 4100), Environmental Protection Agency, Washington, DC 20460].

(c)(1) The BMP program must be clearly described and submitted as part

of the permit application. An application which does not contain a BMP program shall be considered incomplete. Upon receipt of the application, the Director shall approve or modify the program in accordance with the requirements of this subpart. The BMP program as approved or modified shall be included in the draft permit (§ 124.6). The BMP program shall be subject to the applicable permit issuance requirements of part 124, resulting in the incorporation of the program (including any modifications of the program resulting from the permit issuance procedures) into the final permit.

(2) Proposed modifications to the BMP program which affect the discharger's permit obligations shall be submitted to the Director for approval. If the Director approves the proposed BMP program modification, the permit shall be modified in accordance with § 122.62, provided that the Director may waive the requirements for public notice and opportunity for hearing on such modification if he or she determines that the modification is not significant. The BMP program, or modification thereof, shall be fully implemented as soon as possible but not later than one year after permit issuance, modification, or revocation and reissuance unless the Director specifies a later date in the permit.

NOTE: A later date may be specified in the permit, for example, to enable coordinated preparation of the BMP program required under these regulations and the SPCC plan required under 40 CFR part 151 or to allow for the completion of construction projects related to the facility's BMP or SPCC program.

(d) The discharger shall maintain a description of the BMP program at the facility and shall make the description available to the Director upon request.

(e) The owner or operator of a facility subject to this subpart shall amend the BMP program in accordance with the provisions of this subpart whenever there is a change in facility design, construction, operation, or maintenance which materially affects the facility's potential for discharge of significant amounts of hazardous or toxic pollutants into the waters of the United States.

(f) If the BMP program proves to be ineffective in achieving the general ob-

jective of preventing the release of significant amounts of toxic or hazardous pollutants to those waters and the specific objectives and requirements under paragraph (b) of this section, the permit and/or the BMP program shall be subject to modification to incorporate revised BMP requirements.

(Clean Water Act, Safe Drinking Water Act, Clean Air Act, Resource Conservation and Recovery Act: 42 U.S.C. 6905, 6912, 6925, 6027, 6974)

[44 FR 32948, June 7, 1979, as amended at 45 FR 33513, May 19, 1980; 48 FR 14293, Apr. 1, 1983; 60 FR 53875, Oct. 18, 1995]

Subpart L—Criteria and Standards for Imposing Conditions for the Disposal of Sewage Sludge Under Section 405 of the Act [Reserved]

Subpart M—Ocean Discharge Criteria

SOURCE: 45 FR 65953, Oct. 3, 1980, unless otherwise noted.

§ 125.120 Scope and purpose.

This subpart establishes guidelines for issuance of National Pollutant Discharge Elimination System (NPDES) permits for the discharge of pollutants from a point source into the territorial seas, the contiguous zone, and the oceans.

§ 125.121 Definitions.

(a) *Irreparable harm* means significant undesirable effects occurring after the date of permit issuance which will not be reversed after cessation or modification of the discharge.

(b) *Marine environment* means that territorial seas, the contiguous zone and the oceans.

(c) *Mixing zone* means the zone extending from the sea's surface to seabed and extending laterally to a distance of 100 meters in all directions from the discharge point(s) or to the boundary of the zone of initial dilution as calculated by a plume model approved by the director, whichever is greater, unless the director determines that the more restrictive mixing zone or another definition of the mixing